

Message Text

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PAGE 01 BERLIN 00553 01 OF 02 281638Z

47

ACTION EUR-25

INFO OCT-01 ISO-00 EURE-00 SSO-00 NSCE-00 INRE-00 USIE-00

IO-14 ACDA-19 SCA-01 CIAE-00 DODE-00 PM-07 H-03

INR-10 L-03 NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SPC-03

SS-20 NEA-10 TRSE-00 SAJ-01 DRC-01 /131 W

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FM USMISSION BERLIN

TO AMEMBASSY BONN IMMEDIATE

INFO SECSTATE WASHDC IMMEDIATE 3183

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

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C O N F I D E N T I A L SECTION 1 OF 2 BERLIN 553

E.O. 11652: GDS

TAGS: PGOV, WB, GE, GW

SUBJECT: BK/O AND BK/L ON PRIVILEGES AND IMMUNITIES FOR GDR
PERMANENT REPS IN WEST BERLIN

REF: A) BONN 4866; B) BERLIN 492; C) BONN 4336

1. COMPROMISE ON EXTENSION OF GAU-NIER PROTOCOL TO
WEST BERLIN GOES FAR TOWARD MEETING FORESEEN DIFFICULTIES.
WE ASSUME THAT, IN ADDITION TO PROTOCOL
NOTE NO. # PROPER, ORAL DECLARATION BY GAUS ON THAT
NOTE, WHICH DEFINES HOW FRG INTERPRETS ITS RESPONSIBILITY
FOR REPRESENTING INTERESTS OF WEST BERLIN WILL ALSO BE
EXTENDED AS INTEGRAL PART OF NOTE. WE BELIEVE PARAGRAPH 4
OF PROTOCOL SHOULD ALSO BE EXTENDED IF ORDINANCE ON
PRIVILEGES AND IMMUNITIES FOR MEMBERS OF GDR MISSION
OR SUBSTANCE OF THAT ORDINANCE IS TO BE ADOPTED IN WEST
BERLIN BECAUSE IT PROVIDES BASIS ON WHICH ORDINANCE WAS
ISSUED.

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PAGE 02 BERLIN 00553 01 OF 02 281638Z

2. CONCERNING ORDER OF VARIOUS STEPS ENVISAGED

PARA 4 REF A, WE SUGGEST THAT RELEVANT PROVISIONS OF PROTOCOL SHOULD BE EXTENDED TO WEST BERLIN PRIOR TO OR SIMULTANEOUS WITH ISSUANCE OF ALLIED AUTHORIZING DOCUMENT ON PRIVILEGES AND IMMUNITIES ORDINANCE, SINCE RATIONALE FOR PERMITTING APPLICATION IN WEST BERLIN OF ORDINANCE IS THAT IT IS INTENDED TO FACILITATE IMPLEMENTATION OF AGREEMENT FOR PERMANENT MISSIONS TO FUNCTION.

3. WE ASSUME DRAFT BK/O AND BK/L OWE MUCH TO BRITISH QUALMS REPORTED REF C. IN BELIEF THAT AGREEMENT TO EXTEND RELEVANT PARTS OF GAUS-NIER PROTOCOL TO WEST BERLIN REMOVES MUCH OF THOSE CONCERNS, WE OFFER FOLLOWING COMMENTS ON TEXTS:

A. SIMPLE STATEMENT IN BK/O THAT ORDINANCE IS BEING APPLIED SUBJECT TO RESERVATIONS SET FORTH IN BK/O(73)7 WOULD ACCOMPLISH SAME PURPOSE OF PROTECTING ALLIED RIGHTS AS PRESENT WORDING WITHOUT RAISING QUESTIONS AS TO INTENT OF LONGER EXPOSITION. BK/O(73)7 WAS MERELY INTENDED TO MAKE IT CLEAR THAT NORMAL PROCEDURES APPLICABLE TO DIPLOMATS IN BERLIN WOULD BE FOLLOWED IN REGARD TO GDR REPRESENTATION, I.E., ALLIES RETAIN COMPETENCE TO DECIDE WHAT IMMUNITIES AND PRIVILEGES APPLY IN A PARTICULAR CASE.

B. APPLICATION OF PROVISIONS OF ORDINANCE BUT NOT ORDINANCE ITSELF IS NOT CONSISTENT WITH BK/O(73)7, PARAGRAPH 3 OF WHICH SUGGESTS THAT AN ORDINANCE ISSUED UNDER LAW MAY OR MAY NOT ENTER INTO FORCE IN WEST BERLIN BUT NOT THAT ALLIES INTEND SOME MIDDLE GROUND. SWITCH OF SIGNALS COULD WELL INDICATE SPECIAL PROBLEM AND THUS DRAW MORE ATTENTION TO THIS QUESTION THAN EITHER FRG OR ALLIES DESIRE. LANGUAGE ON PERFORMANCE OF FUNCTIONS OF MISSIONS "AS AGREED BETWEEN GOVERNMENTS OF FRG AND GDR" STRIKES US AS MISLEADING, PARTICULARLY IF IT IS NOTED THAT NOT ALL OF GAUS-NIER PROTOCOL IS EXTENDED TO WEST BERLIN.

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PAGE 01 BERLIN 00553 02 OF 02 281638Z

47

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C O N F I D E N T I A L SECTION 2 OF 2 BERLIN 553

C. WORDING, "SENAT IS AUTHORIZED", IS MORE SUITED TO A BK/L, WHICH IS INTERNAL DOCUMENT INTENDED TO PROVIDE EXECUTIVE WITH INSTRUCTIONS, BUT IS NOT NORMALLY USED IN BK/O, WHICH IS PUBLIC LAW BINDING UPON JUDICIARY AS WELL AS SENAT.

D. WE WONDER WHETHER FIRST SENTENCE OF BK/L SHOULD ATTEMPT TO INDICATE THAT MEMBERS OF GDR PERMANENT MISSION WILL NOT PERFORM ANY OFFICIAL FUNCTIONS IN WEST BERLIN. VISIT TO WEST BERLIN BY MEMBER OF GDR MISSION HOWEVER UNLIKELY, WOULD SERVE TO DEMONSTRATE TIES BETWEEN WEST BERLIN AND FRG IN SAME MANNER AS WOULD VISIT BY MEMBER OF REGULAR BONN DIPLOMATIC CORPS.

E. WE ASSUME REFERENCE TO AK LAW 8 IS INTENDED TO MAKE CLEAR ALLIES ARE ABLE TO EXPEL MEMBER OF GDR MISSION DESPITE HIS QUASI-DIPLOMATIC STATUS, BUT IT SHOULD BE NOTED, THAT AK LAW 8 PROVIDES ALLIES AUTHORITY
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PAGE 02 BERLIN 00553 02 OF 02 281638Z

TO EXPEL ONLY INDIVIDUAL WHO IS NOT GERMAN OR WHO IS "GERMAN NATIONAL NOT ORDINARILY RESIDENT IN GREATER BERLIN." IF MEMBER OF GDR MISSION IS RESIDENT OF EAST BERLIN, AS WOULD BE QUITE POSSIBLE, WE WOULD ACCORDINGLY NOT HAVE AUTHORITY UNDER LAW TO EXPEL HIM FROM WEST BERLIN. TO BEST OF OUR RECOLLECTION, IT IS MORE THAT 20 YEARS SINCE ANY GERMAN HAS BEEN FORCIBLY REMOVED FROM BERLIN BY ALLIES, AND TO IMPLY THAT WE WOULD DO SO, WOULD DAMAGE GREATER BERLIN THEORY WITHOUT SERVING PRACTICAL PURPOSE. IF CASE ARISES, SOME OTHER METHOD WOULD BE

MORE APPROPRIATE, E.G., INDIVIDUAL COULD BE STRIPPED OF IMMUNITY, WHEREUPON HE WOULD PROBABLY ABSENT HIMSELF RATHER QUICKLY FROM WESTERN SECTORS.

F. RE STATEMENT THAT ALLIED GOVERNMENTS ARE IN CONSULTATION WITH FRG ON MEASURES THAT MIGHT BE NECESSARY IF MEMBER OF GDR MISSION EXCEEDS PERMISSIBLE FUNCTIONS, WE WOULD PREFER NOT TO IMPLY TO EITHER SENAT OR FRG THAT OUR ACTION REQUIRES FRG CONCURRENCE. (ADDITIONALLY, SENTENCE HAS SOMETHING OF CRISIS TONE, WHEREAS IN FACT NO ONE EXPECTS TO SEE MUCH OF MEMBERS OF GDR MISSION IN WEST BERLIN.)

4. PROVIDED SUGGESTIONS IN PARA 1 ABOVE CAN BE MET WITH RESPECT TO GAUS-NIER PROTOCOL, WE SUGGEST AK AUTHORIZE APPLICATION OF ORDINANCE IN BERLIN BY MEANS OF FOLLOWING BK/L WITHOUT BK/O:

"SUBJECT TO THE SAME RESERVATIONS SET FORTH IN BK/O(73)7, THE ALLIED KOMMANDATURA AUTHORIZES THE PROBULGATION IN BERLIN OF THE ABOVE CITED ORDINANCE."
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